

<b>Matter Information</b>
<p>Matter Name: R3 Notice of Noncompliance (NON) issued to Hazelton Creek Properties, LLC (Hazelton)</p> <p>HQ/Region Lead: Bethany Fisher(OGC); Cheryl Jamieson (R3)</p> <p>Point of Contact: Geraldine Gardner (WCED); Tony Baney (WCED)</p> <p>Date of Briefing: February 26, 2019</p>
<b>Brief Overview of Matter</b> (two or three sentences)
Hazelton petitioned the U.S. Court of Appeals for the Third Circuit (Court) for review of a R3 NON and follow-up letter regarding use of fill material containing PCBs at concentrations above 2ppm. The Court requested briefs from both sides. The Court has not set a new filing deadline.
<b>Action Requested</b>
This is just informational.
<b>Procedural Posture</b>
OGC and DOJ provided OECA with a draft brief that challenges the petition on jurisdictional grounds that a NON is not a final EPA action or rule reviewable under TSCA §19. Update: DOJ is contacting Hazelton counsel to see if Hazelton is willing to jointly move the Court to seek an abeyance while the parties discuss other resolutions.
<b>Summary of Claims and Defenses</b> (with statutory/regulatory citations)
<p>R3 issued a NON asserting that Hazelton may be in violation of TSCA § 6(e) for using PCBs at concentrations above 2 ppm in soil as fill material.</p> <p>Hazelton asserts that according to EPA's PCB Q&amp;A Manual, PCBs in soil at concentrations less than 25 ppm from an old release may be used as fill.</p> <p>OSCPP and OPPT are looking into the implications of considering the disposition of PCB- containing materials at concentrations above 2ppm covered by PADEP permits to be disposal or use. This issue would need to be resolved before initiating a formal enforcement action. Note: Disposal of waste containing PCBs at concentrations less than 50ppm would not be regulated.</p>
<b>Discussion of Compliance-related Injunctive Relief Sought</b> (linked to statutory/regulatory citations)
EPA suggested that Hazelton take actions to prevent any future violations of TSCA §6(e).
<b>Discussion of Mitigation-related Injunctive Relief Sought</b> (identifying harm from statutory/regulatory violations)
See above.
<b>Discussion of SEPs (if any) and Penalties Sought</b>
NA
<b>State Position on Matter</b>
Hazelton has a Beneficial Use Permit issued by the Pennsylvania Department of Environmental Protection (PADEP). PADEP's Beneficial Use Permits allow the use of PCB-containing materials that contain PCBs at concentrations above 2 ppm. OSCPP and OPPT are looking into whether the use of PADEP's permits are preempted by TSCA where the use of PCBs above 2ppm is prohibited.
<b>Significant or Precedential Issues</b>
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<b>Other</b> <div style="border: 1px dashed black; padding: 5px; text-align: center; margin-top: 10px;"> <b>Attorney Client / Ex. 5</b> </div>